

Department of Permits and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204
Baltimore County, Maryland

In the Matter of

Civil Citation No. 60313

Den Canh Phan
Thanh Tam Ngyuyen

5660 Gunpowder Road

Respondents

FINDINGS OF FACT AND CONCLUSIONS OF LAW
FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Code Enforcement Hearing Officer for the Department of Permits and Development Management on July 28, 2009 for a Hearing on a citation for violations under the Baltimore County Zoning Regulations (BCZR) section 500.9, failure to comply with Zoning Commissioner's Order on Special Hearing dated December 30, 2008 Case # 2009-0105 SPH on residential property zoned DR 2 known as 5660 Gunpowder Road, 21162.

On June 29, 2009, pursuant to Baltimore County Code §3-6-205, Inspector Keith Parker issued a Code Enforcement & Inspections Citation. The citation was sent to the Respondent by 1st class mail to the last known address listed in the Maryland State Tax Assessment files.

The citation proposed a civil penalty of \$1,000.00 (one thousand dollars).

The following persons appeared for the Hearing and testified: Den Phan, Respondent and, Keith Parker, Baltimore County Code Enforcement Officer.

After proper consideration of all the evidence and testimony presented, the Hearing Officer finds:

A. This Citation was issued on June 29, 2009 for failure to comply with the Zoning Commissioner's Order dated December 30, 2008 in Case No. 2009-0105-SPHA.

B. This property contains two houses and the owner desired to divide the property into two lots. In his Order, Zoning Commissioner William J. Wiseman, III granted Respondent's Petition for Special Hearing and Variance, subject to six restrictions that are conditions precedent to the relief ordered. The Order granted several requested variances including (1) to permit an existing accessory structure larger than the principal dwelling on Lot #2, and (2) to allow on Lot #1 an existing dwelling with a smaller than usual side yard setback, and an existing swimming pool, and on Lot #2 an existing dwelling with smaller than usual setbacks and an existing accessory structure (garage) with greater height than usually permitted.

C. The six restrictions include Restriction #3, "Within six months (180 days) of the date hereof, the Petitioners shall discontinue any multi-family, boarding or rooming house activities and remove from the premises any disabled vehicles, car parts and trash."

D. Inspector Keith Parker testified that he inspected the property in May and June 2009 and interviewed tenants and determined that the multi-family tenancy continued past the deadline set by the Zoning Commissioner. The 180 day period expired June 27, 2009. One family lives in the building on Lot #1. In the building on Lot #2, there are two families living in three apartment units. A mother and grandmother live upstairs with a lease expiring September 30, 2009. Three sons live in another unit, with a lease expiring March 30, 2010. A third unit is occupied by a different family. A copy of the Rental Agreement for Apartment #3 is in the file; it commenced September 20, 2008 and ends on September 30, 2009.

E. Mr. Phan testified that this information is correct and that he entered into one of the leases in March 2009, after the Zoning Commissioner's order.

F. Based on information presented, it appears that the tenants of Apartments #1 and #2 are related and that their joint occupancy of the house would not violate zoning restrictions governing boarding and rooming houses. However, the tenants of Apartment #3 are not related to the other tenants. Baltimore County's zoning regulations restrict the number of unrelated adults who can occupy a house for compensation. Because this is not the owner's domicile, the house can only be occupied by two unrelated adults absent a permit for a boarding or rooming house. BCZR Section 101.1; Section 408B.

G. In order to comply with the terms of the Order issued by Zoning Commissioner Wiseman, one of the families should have been removed from the house by June 27, 2009. Failure to satisfy this restriction, which was a condition precedent to the relief granted by the Zoning Commissioner, may cause that relief to be rescinded, but it is not a code violation. The Citation as issued fails to specify a Code violation. See County Code Section 3-6-205.

IT IS ORDERED by the Code Enforcement Hearing Officer that the Citation is DISMISSED.

IT IS FURTHER ORDERED that this Order be forwarded to the Zoning Commissioner.

IT IS FURTHER ORDERED that the County inspect the property to determine whether the violations have been corrected.

ORDERED this 12th day of August 2009.

Signed: ORIGINAL SIGNED
Margaret Z. Ferguson
Baltimore County Hearing Officer

NOTICE TO RESPONDENT: The Respondent is advised that (1) pursuant to §3-6-206(g)(2) of the Baltimore County Code, the Respondent may make written application to the Director of the Department of Permits & Development Management within 10 days to modify or amend this order and (2) pursuant to §3-6-301(a), Baltimore County Code, the Respondent may appeal this order to the Baltimore County Board of Appeals within fifteen (15) days from the date of this order; any such appeal requires the filing of a petition setting forth the grounds for appeal, payment of a filing fee of \$150 and the posting of security to satisfy the penalty assessed.

MZF/jaf